

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
 CLAUDE EUGENE SANDERS,) CASE NO. BK78-0-1537
)
 BANKRUPT)
)
 LUCINDA L. CHILDS,)
)
 Plaintiff)
)
 vs.)
)
 CLAUDE EUGENE SANDERS,)
)
 Defendant)

MEMORANDUM AND ORDER

At the pretrial conference held in the above-captioned adversary proceeding, plaintiff agreed to submit the matter for decision based upon the allegations of the complaint. The allegations of the complaint are that on September 30, 1977, plaintiff filed a personal injury lawsuit against Mr. Sanders, which lawsuit was pending on December 12, 1978, the date upon which Mr. Sanders filed his voluntary petition in bankruptcy. Plaintiff here seeks a determination of the dischargeability of the indebtedness allegedly due from the defendant.

Section 63a(7) [11 U.S.C. §103a(7)] provides that one of the types of debts which is provable in a bankruptcy proceeding is:

". . .the right to recover damages in any action for negligence instituted prior to and pending at the time of the filing of the petition in bankruptcy. . ."

The result of the foregoing statutory provision is to make the type of lawsuit involved here which is pending at the date of the voluntary petition in bankruptcy a provable debt and, thus, a dischargeable debt under §17(11 U.S.C. §35). Accordingly, it is

ORDERED that the Court finds generally in favor of the defendant and against the plaintiff; and it is further

ORDERED that the indebtedness allegedly due the plaintiff from the defendant be, and the same hereby is, discharged in this bankruptcy proceeding.

DATED: May 1, 1979.

BY THE COURT:

